IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.7.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

S.A.No.1624 of 1996

1. Ayyappan alias Soman
2. Kanna Sevanan
3. Subramanian
4. Kanna Joghi
5. Munsi Nanjan
6. Munsi Sevanan .. Appellants/ Defendants

vs.

1. K.P.Bhojan
2. K.P.Halan alias K.P.Haldurai .. Respondents/ Plaintiffs

PRAYER : This Second Appeal has been filed against the judgment and decree, dated 31.3.1995, made in A.S.No.7 of 1994, on the file of the District Court, The Nilgiris District at Uthagamandalam, confirming the judgment and decree, dated 31.1.1994, made in O.S.No.5 of 1993, on the file of the District Munsif Court, Coonoor.

For Appellants : M/s.Hema Sampath, Senior counsel
For respondents : Mr.P.Jagadeesan for Mr.R. Subramanian

J U D G E M E N T

The second appeal has been filed against the judgment and decree, dated 31.3.1995, made in A.S.No.7 of 1994, on the file of the District Court, The Nilgiris District at Udhagamandalam, confirming the judgment and decree, dated 31.1.1994, made in O.S.No.5 of 1993, on the file of the District Munsif Court, Coonoor.

2. The defendants in the suit O.S.No.5 of 1993, on the file of the District Munsif Court, Coonoor, are the appellants in the present second appeal. The plaintiffs had filed the suit in O.S.No.5 of 1993, praying for the relief of permanent injunction against the defendants and for costs.

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3. The brief facts of the case, as stated by the plaintiffs, are as follows:

The plaintiffs and their late brother K.B.Raju Belli had jointly purchased the landed property measuring 2.00 acres bearing Survey No.478/2 and 2.53 acres bearing Survey No.479/2, both situated at Kattabettu in Jagathala Village, under a sale deed, dated 18.8.1971. By virtue of an oral partition and settlement amongst the said three brothers, the plaintiffs became entitled to the entire area, namely, 2.00 acres in survey No.478/2, with the possession of the property.

4. The first plaintiff had sold 0.71 acre and the second plaintiff had sold 0.70 acre making in all 1.41 acres, under the sale deeds, dated 9.12.1986 and 12.1.1988, respectively, out of the said two acres, in favour of one Janaki ammal of Kotagiri and the balance extent measuring 0.59 acre is being held and possessed and enjoyed by the plaintiffs till today. While so, the defendants, who are utter strangers to the suit property, had started to interfere with the peaceful possession and enjoyment of the suit property, without any right, title or interest, whatsoever, in the suit property.

5. On 30.11.1992 and 10.12.1992, the defendants had trespassed into the suit property and uprooted tea plants numbering about 500 and caused considerable damage to the tune of Rs.1,250/-, taking law into their own hands. The plaintiffs had lodged a police complaint against them, on 1.12.1992, and the defendants 1 to 3 were summoned to the police station and warned not to repeat their nefarious activities. Thus, the plaintiffs are put to great hardship and irreparable loss. Therefore, the plaintiffs had filed the suit for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit properties by the plaintiffs.

6. The averments made in the written statement filed by the first defendant, which had been adopted by the defendants 2 to 6, are as follows:

The entire field in Survey No.478/2 of Jagathala Revenue Village, having a total extent of 2.70 acres is a joint patta holding with several co-pattadars. As there has been no partition of their respective shares by metes and bounds between the co-pattadars and their descendants, all these co-pattadars are deemed to be in joint possession of the entire field. No definite boundaries can be attributed to the holding of any particular co-pattadar. In such circumstances, the plaintiffs could file a suit for partition and for separate possession of their shares in the

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properties in question and that a suit for permanent injunction cannot be filed by them. The entire extent of 2.70 acres in the suit survey field originally belonged to two brothers, namely, Kari and Bellan, sons of Kothala Hiriya Gowder of Kattabettu Village, each of whom became entitled to an extent of 1.35 acres. After the death of Kari, his five sons, namely, Kascoola Sevenan, Nanjan, Joghee, Bella Maistri and Bellie, had become entitled to an extent of 0.27 acres each. Mathan and Bellan, sons of Nanjan were entitled to half share each in the property of Nanjan i.e., 0.13½ acres. The descendants of the third son Joghee are entitled to 0.27 acre and they are in joint possession of the said lands, along with the other co-pattadars.

7. The four sons of Bellan had 1/4th share in the property belonging to an extent of 1.35 acres. By a document No.323 of 1926, registered in the office of the Sub-Registrar, Coonoor, Bella Maistry and Bellie, the two sons of Kari, along with Bellan, son of Nanjan, Mathan and Lingan had sold 2.00 acres of land to C.S.Balasundaram Iyer. All the five together had only an extent of 1.35 acres. Therefore, the Vendee C.S.Balasundaram Iyer could have valid title only to an extent of 1.35 acres and he could not have purchased the remaining extent of 0.65 acre from his vendor.

8. By a document No.189 of 1967, registered in the office of the Sub-Registrar, Coonoor, the descendants of late C.S.Balasundaram Iyer had sold 2.00 acres of lands to one V.K.Gopalan, son of Karuman of Kotagiri. The said V.K.Gopalan had sold the 2.00 acres to the plaintiffs and their brother by a document No.751 of 1971. Even though the three title deeds of C.S.Balasundaram Iyer, V.K.Gopalan and the plaintiffs and their brother Raju Bellie, mentioned an extent of 2.00 acres, they were entitled to sell only an extent of 1.35 acres. By a document No.1334 of 1986, the first plaintiff K.B.Bhojan had sold an extent of 0.71 acre to one Mrs.Janaki. Likewise, the second plaintiff had sold an extent of 0.70 acre to the said Mrs.Janaki by a document No.32 of 1988. Thus, both the plaintiffs purported to sell a total extent of 1.41 acres, although they were entitled to only two thirds of 1.35 acres of the properties.

9. The oral partition and settlement alleged by the plaintiffs are not true and that the plaintiffs had made a deliberate attempt to acquire an imaginary title of some extent of the suit field to themselves for the purpose of the filing of the suit. The claims made by the plaintiffs with regard to the damage done to the tea plantation in the suit properties by the defendants are totally false. The plaintiffs were never in possession of the suit properties and it is false to state that the defendants are strangers to the suit properties. The boundaries furnished in the plaint are incorrect and false. The sale deeds relied on by the

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plaintiffs do not mention the boundaries of properties in question. There is no cause of action for the suit. Therefore, the suit is to be dismissed with costs.

10. Based on the rival contentions raised on behalf of the plaintiffs as well as the defendants, the trial Court had framed the following issues for consideration:

> "(1) Whether the suit properties are joint properties belonging to the purchasers, who purchased the properties from Kothala Hiriya Gowder and his legal heirs and also to all the legal heirs of Kothala Hiriya Gowder?
>
> (2) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?
>
> (3) To what other relief the plaintiffs are entitled to?"

11. With regard to the first issue, the trial Court had found that by a sale deed, dated 26.3.1926, marked as Exhibit A.11, the legal heirs of Kothala Hiriya Gowder had sold 2.00 acres of land to C.S.Balasundaram Iyer describing the properties by proper boundaries and on such sale being made, the properties in question were put in possession of C.S.Balasundaram Iyer. It had also been found that all the legal heirs of Kothala Hiriya Gowder, available at that time, had together executed the said sale deed and Bellan son of Nanjan had attested the said document. Further, Sevenan one of the legal heirs of Kothala Hiriya Gowder had accepted during his cross-examination that in the year 1926, his family had only 2.00 acres and 15 cents. Since 2.00 acres were sold in the year 1926, by the document marked as Exhibit A.11, the remaining 2.15 acres were held jointly by the members of his family. He had also stated that he and his family members had no rights over the properties sold to C.S.Balasundaram Iyer in the year 1926. It is only with regard to the remaining 2.15 acres, he and his family members claim certain rights.

12. The trial Court had also found that the heirs of Kothala Hiriya Gowder had been ousted from the properties sold to C.S.Balasundaram Iyer. The 2.00 acres of lands purchased by C.S.Balasundaram Iyer had been alienated from the joint family properties in the year 1926. Thereafter, the said lands had been sold to V.K.Gopalan in the year 1967 under Exhibit A.10. Further, the said properties were sold to the plaintiffs and their brother in the year 1971. Some portions of the said 2.00 acres of land were sold to Janaki ammal at the time of the filing of the suit. The suit property of 0.59 acre alone had remained in the plaintiffs' possession and enjoyment.

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13. With regard to the second issue arising for consideration, the trial Court had found that the legal heirs of Kothala Hiriya Gowder had sold the properties in the year 1926, by way of a document attested by the father of the sixth defendant. Since then, the legal heirs of Kothala Hiriya Gowder had no right whatsoever in the said properties, as accepted by Sevenan who is one of the legal heirs of Kothala Hiriya Gowder. The trial Court had also found that the boundaries of 2.00 acres of land, sold to C.S.Balasundaram Iyer in the year 1926, were described by proper boundaries. Further, by subsequent deeds of sale, the said property has been conveyed to his purchasers with proper boundaries. Since the suit properties in question were not joint family properties as alleged by the defendants, the contention that the relief of injunction cannot be granted against a co-owner does not arise. Thus, the trial Court had decreed the suit in favour of the plaintiffs.

14. Aggrieved by the judgment and decree of the trial Court, dated 31.1.1994, made in O.S.No.5 of 1993, the defendants in the suit had filed an appeal, in A.S.No.7 of 1994, before the District Munsif Court, Coonoor.

15. Based on the contentions raised on behalf of the appellants as well as the respondents and relying on the evidence on record, the lower appellate Court had framed the following point for consideration:

> "Whether the appellants/plaintiffs were entitled to the relief of permanent injunction as prayed for?"

16. The lower appellate Court had confirmed the findings of the trial Court stating that Exhibit A.11 was an old document of the year 1926 and therefore, its contents could be taken to be true. Out of the total extent of 4.15 acres in Survey No.478/2, 2.00 acres had been sold to C.S.Balasundaram Iyer describing the property with proper boundaries. In the said sale deed conveying the properties to C.S.Balasundaram Iyer, Joghee Gowder had signed as a witness. The defendants in the suit and the appellants in the first appeal are the legal heirs of Joghee Gowder. The sale deed conveying the property to C.S.Balasundaram Iyer is valid. Therefore, the subsequent sale deeds, with regard to the said property, would also stand valid in the eye of law, unless the said sale deeds have been disputed in the manner known to law and proved to be invalid. Thus, the lower appellate Court had confirmed the judgment and decree of the trial Court, dated 31.1.1994, made in O.S.No.5 of 1993.

17. Aggrieved by the judgment and decree of the lower appellate Court, dated 31.3.1995, made in A.S.No.7 of 1994, the

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defendants in the suit have preferred the present second appeal before this Court in S.A.No.1624 of 1996. This Court had admitted the second appeal to consider the following substantial questions of law:

> "(A) Whether in law have not the Courts below erred in deciding the title of the plaintiffs in an injunction suit in the absence of any declaratory relief?
>
> (B) Whether in law are not the decrees and judgments of the Courts below vitiated in that they have not independently dealt with the aspect of possession overlooking the settled proposition that in an injunction suit the Courts have to find whether the plaintiff was in possession on the date of suit?
>
> (C) Whether in law the Courts below ought not to have seen that for deciding the question of title, the suit should have been valued on the market value of the property and if so done, the jurisdiction of District Munsif's Court, would be ousted as the market value would exceed Rs.15,000/-?
>
> (D) Whether in law the lower appellate Court ought not to have held that the trial Court had no pecuniary jurisdiction to try the suit and that the decree passed by a Court without jurisdiction is a nullity?
>
> (E) Whether in law have not the Courts below erred in overlooking Section 44 of Transfer of Property Act?"

18. The learned counsel appearing on behalf of the appellants had contended that the vendor of the plaintiffs could not have conveyed an extent of lands more than what they had. In fact, they could have conveyed only undivided interests in such lands, without specifying the actual portion of the properties, ssince the lands were in the joint possession and enjoyment of all the members constituting their family.

19. It was further contended by the learned counsel appearing on behalf of the appellants that the Courts below could not have granted a decree of permanent injunction in favour of the plaintiffs against co-owners. It was also contended that the Courts below had decided the question of title without framing it as an issue for consideration.

20. The learned counsel appearing on behalf of the appellants had also submitted that since the chitta marked as Exhibit A.5

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contains the names of the plaintiffs as well as the defendants, it should be taken that the suit properties were in their joint possession and enjoyment. Since a decree of injunction cannot be granted against co-owners, the judgment and decree of the Courts below are erroneous and unsustainable in law.

21. It was also contended that the Courts below had considered the aspect of ouster without the same having been pleaded by the plaintiffs. Thus, the Courts below had declared the title of the plaintiffs, even though the plaintiffs had filed only a suit for the relief of permanent injunction. On the other hand, even though the plaintiffs had not proved their possession in a manner known to law, the Courts below had wrongly concluded that the defendants had not proved their title. Further, the suit itself could not have been decided by the trial Court for lack of jurisdiction and the plaintiffs had not paid the correct court fee as their title has been declared by the decree of the trial Court.

22. Per contra, the learned counsel appearing on behalf of the respondents had contended that the Courts below had come to the right conclusion in decreeing the suit as prayed for by the plaintiffs, who are the respondents in the present second appeal. The properties in question have been sold by a sale deed, dated 26.3.1926, marked as Exhibit A.11 by the legal heirs of Kari and Bellan in favour of C.S.Balasundaram Iyer. The boundaries of the sold properties were also clearly given in the said document.

23. It was also contended by the learned counsel appearing on behalf of the respondents that by a document, dated 5.1.1993, marked as Exhibit A.1, the plaintiffs and their brother had bought the properties from V.K.Gopalan with the same description of the boundaries as found in the document, dated 26.3.1926, marked as Exhibit A.11. The defendants have not chosen to declare the Exhibits A.1, A.10 and A.11 as invalid in a manner known to law.

24. It was also contended that the Sixth defendant was examined as D.W.1 during the trial in O.S.No.5 of 1993. During the cross-examination, he has stated that out of 4.15 acres, 2.00 acres were sold by way of the sale deed, dated 26.3.1926, marked as Exhibit A.11 and the remaining 2.15 acres alone remained as the joint family properties belonging to the other members of the family. It was also admitted by D.W.1 that he and the other defendants did not have any right in the 2.00 acres of land sold to C.S.Balasundaram Iyer in the year 1926. In such circumstances, the Courts below have rightly come to the conclusion that the plaintiffs/respondents were entitled to the reliefs sought for by them in the suit O.S.No.5 of 1993, on the file of the District Munsif Court, Coonoor.

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25. On analysing the records available before this Court and based on the rival contentions raised on behalf of the appellants as well as the respondents, this Court is of the considered view that the Courts below have come to the right conclusion in decreeing the suit as prayed for by the plaintiffs. The documentary evidence relied on by the plaintiffs clearly go to show that the plaintiffs have been in possession and enjoyment of the suit properties and that the suit properties have been conveyed to them, with proper boundaries, by way of the sale deeds marked as Exhibits A.1, A.10 and A.11.

26. On the contrary, the defendants, who are the appellants in the present second appeal, have not proved their claims either by way of documentary or by oral evidence. The sixth defendant, examined as D.W.1, had categorically stated, during his cross-examination, that the defendants have no right whatsoever in the 2.00 acres of land sold to C.S.Balasundaram Iyer by a sale deed, dated 26.3.1926, marked as Exhibit A.11.

27. Further, it is seen that the defendants have not chosen to challenge the sale deeds marked as Exhibits A.1, A.10 and A.11, conveying the suit properties to the plaintiffs, in a manner know to law. The Courts below, while granting the decree of permanent injunction in favour of the plaintiffs, have also examined the aspect of title and that by itself cannot be a good or sufficient reason to set aside the judgment and decree of the Courts below.

28. In such view of the matter, the substantial questions of law arising for consideration in the present second appeal are answered in favour of the plaintiffs, who are the respondents in the present second appeal. Hence, the second appeal is dismissed confirming the judgment and decree of the Courts below. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To:

1. The District Court,
   The Nilgiris District at Uthagamandalam

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2. The District Munsif Court, Coonoor

3. The Record Keeper,
VR Section,
High Court, Madras

1 cc to Mr.R. Subramanian, Advocate, SR. 41894

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